TENTATIVE RULINGS
LAW & MOTION CALENDAR
Wednesday, August 26, 2026 3:00 p.m.
Courtroom 17 – Hon. Jane Gaskell
3035 Cleveland Avenue, Santa Rosa

PLEASE NOTE: In accordance with the Order of the Presiding Judge, a party or representative of a party may appear in Department 17 in person or remotely by Zoom, a web conferencing platform.

CourtCall is not permitted for this calendar.

If the tentative ruling is accepted, no appearance is necessary via Zoom unless otherwise indicated.

TO JOIN D17 ZOOM ONLINE:
Meeting ID: 161 126 4123
Passcode: 062178
https://sonomacourt-org.zoomgov.com/j/1611264123

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The following tentative rulings will become the ruling of the Court unless a party desires to be heard. If you desire to appear and present oral argument as to any motion, **YOU MUST NOTIFY** Judge Gaskell's Judicial Assistant by telephone at **(707) 521-6723**, and all other opposing parties of your intent to appear, and **whether that appearance is in person or via Zoom**, by ***4:00 p.m. the court day immediately preceding the day of the hearing.***

1. 24CV02196, Disbrow v. Emerald Triangle Management Group, Inc.

Self-represented Plaintiff/Judgment Creditor William Disbrow ("Disbrow") moves to amend judgment to add success and alter ego debtors Hailos, Inc. ("Hailos") and Axel Properties, LLC ("Axel"), pursuant to Code of Civil Procedure ("C.C.P.") section 187. The motion is **GRANTED** as to Hailos, but **DENIED** as to Axel.

I. PROCEDURAL HISTORY

Disbrow filed this action against Emerald Triangle Management Group, Inc. ("ETMG") on April 8, 2024, and did not name either Hailos or Axel as Defendants. (Opposition, 2:7-10.) On July 8, 2024, a Default Judgment was entered against for amount of $146,841.73 against ETMG only for failure to respond to the Complaint. (*Ibid.*)

Hailos and ETMG were wholly owned subsidiaries of a multi-member Delaware limited liability company named Sohl Holdings, LLC, which owned several cannabis-related operating entities. (Opposition, 2:11-14.) Axel is owned by three individuals in their personal capacities, Taylor

Lefevre, Casey Eliason, and Stacia Eliason, who are also members of Soh Holdings, LLC. (*Id*. at 3:23-28.) There are twelve other members of Sohl Holdings who have no ownership interest in Axel, and Axel is not a subsidiary of Soh Holdings. (Opposition, 4:4-8.)

Disbrow moves to add Hailos and Axel as additional judgment debtors to the Default Judgment arguing they are alter egos, mere continuations, and successors of ETMG. (Motion to Amend, 2:3-15.) Hailos and Axel both oppose the motion.

The Court continued the hearing on Plaintiff's motion to amend requesting that the parties submit further briefing by August 14, 2026, on ETMG, Hailos, and Axel to demonstrate what similarities exist or do not exist between the management, ownership, day-to-day business, products, processes, procedures, and models of the entities to resolve the issue of unity of interest and ownership.

II. REQUEST FOR JUDICIAL NOTICE

The court must take judicial notice of any matter requested by a party, so long as it complies with the requirements under C.C.P. § 452. (C.C.P. § 453.) The Court may take judicial notice of "facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy." (C.C.P. § 452(h).) However, while courts may take notice of public records, they may not take notice of the truth of their contents. (*Herrera v. Deutsche Bank National Trust Co*. (2011) 196 Cal.App.4th 1366, 1375.)

Subject to these limitations, the Court **GRANTS** Disbrow's request for judicial notice of the Secretary of State's public records for ETMG, Hailos, and Axel, and of the Department of Cannabis Control records for Hailos.

III. EVIDENTIARY OBJECTIONS

1. Hailos and Axel's objections to Disbrow's entire requests for judicial notice are **OVERRULED**.

2. Hailos and Axel's objections to the Declaration of William Disbrow are **OVERRULED**.

3. Hailos and Axel's objection to the entire Supplemental Declaration of William Disbrow is **SUSTAINED**.

4. Hailos and Axel's objection to the entire Request for Judicial Notice in support of the Reply is **OVERRULED**.

IV. MOTION TO AMEND JUDGMENT

Legal Standard

Per C.C.P. section 187, "when jurisdiction is, by the Constitution or this Code, or by any other statute, conferred on a Court or judicial officer, all the means necessary to carry it into effect are also given; and in the exercise of this jurisdiction, if the course of proceeding be not specifically pointed out by this Code or the statute, any suitable process or mode of proceeding may be adopted which may appear most conformable to the spirit of this Code."

Disbrow's Motion

Disbrow seeks to amend the motion Default Judgment under C.C.P. section 187 to add Hailos and Axel as new judgment debtors who are the alter ego or mere continuation of ETMG. (Motion, 3:3-22.) As cited by Disbrow, the Court of Appeal explains in *Toho-Towa Co., Ltd. v. Morgan Creek Productions, Inc.* (2013) 217 Cal.App.4th 1096 that, "the ability under section 187 to amend a judgment to add a defendant, thereby imposing liability on the new defendant without trial, requires both (1) that the new party be the alter ego of the old party and (2) that the new party had controlled the litigation, thereby having had the opportunity to litigate, in order to satisfy due process concerns."

Disbrow argues that Hailos is an "alter ego" or "mere continuation" of ETMG. Disbrow cites to *Automotriz Del Golfo De California S. A. De C. V. v. Resnick* (1957) 47 Cal.2d 792 to explain that there are two requirements for application of the "alter ego" doctrine: (1) that there be such unity of interest and ownership that the separate personalities of the corporation and the individual no longer exist and (2) that, if the acts are treated as those of the corporation alone, an inequitable result will follow. Here, ETMG and Hailos have the same ownership and management because both companies' founders are Casey Eliason, Stacia Eliason, and Taylor Lefevre, and Monica Carrasco, who served as vice president of finance and controller of ETMG and personally managed the debt underlying this judgment, is now the chief financial officer and director of Hailos. (Motion, 4:11-27.) Furthermore, Hailos and ETMG are operated out of the same exact address and sell the same brands of products. (*Id*. at 5:1-28, 6:1-19.) Finally, Hailos was incorporated on May 10, 2024, exactly 59 days before the Default Judgment was entered against ETMG, which company was listed as "Inactive" on the Secretary of State's website only three weeks after the Default Judgment was entered. (*Id*. at 6:9-19.)

Disbrow argues that Axel is also an alter ego because it is managed by the same three founders of ETMG and Hailos and because it operates out of the same address, too. (Motion to Amend, 7:20-25.) Disbrow also believes that ETMG's own 2024 P&L records show $38,250.00 in rent expenses, which Disbrow believes was paid to Axel Properties, LLC. (*Id*. at 7:25-28, 8:1.)

Opposition

Hailos and Axel argue that, because neither entity was named, served, appeared, or participated in any way in this action, Disbrow is barred from seeking to amend the default judgment to add them as alter egos. (Opposition, 1:21-24.) They cite to the case *Wolf Metals Inc. v. Rand Pacific Sales, Inc.* (2016) 4 Cal.App.5th 698, in which the Court of Appeal held that for default judgments, the application of the alter ego doctrine is limited because of due process considerations. (Opposition, 4:17-21.) The main limitation is that any person against whom a claim is asserted in a judicial proceeding shall have the opportunity to be heard and to present defenses. (*Wolf Metals Inc.*, supra, at p. 704.) In *Motores De Mexicali, S. A. v. Superior Court In and For Los Angeles County* (1958) 51 Cal.2d 172, the Supreme Court found that there was no duty to appear and defend personally in an action where no claim had been made against a nonparty personally. (*Motores De Mexicali, S.A.*, supra, at p. 176.)

Even if the alter ego theory were accepted, Hailos and Axel argue that they are not alter egos of ETGM because they maintained separate bank accounts and Hailos operates at its own location even if it is the same general campus which Axel rents out. (Opposition, pp. 8-10.) Furthermore, they argue that Axel is a landlord, not a company operating any cannabis business, and it owns real property leased out to multiple tenants and doesn't share any management personnel with ETMG. (*Id*. at pp. 10-11.)

<u>Reply</u>

Disbrow argues in the Reply that the default judgment bar for amendments does not reach a successor or mere continuation because under the *Wolf Metals Inc*. matter, the trial court amended a default judgment to add both an individual and a successor corporation, but the Court of Appeal only reversed as to the individual because the successor continued the predecessor's business under a different name, sharing the same principals, location, and assets. (Reply, pp. 2-3.) Furthermore, Respondent's own admissions admitted common ownership in the Declaration of Eliason. (*Id*. at 3:11-23.)

<u>Supplemental Briefs</u>

Disbrow's second supplemental brief details compliance with the motion to compel that was separately granted that is not relevant to this motion. It also talks about Bear Humboldt's social media posts and websites and gives a brief background on the supply relationship between Disbrow Family Farms, LLC and ETMG.

Hailos and Axel's supplemental brief argue some of the same points stated in the opposition, but emphasizes that alter-ego standard cannot reach non-parties to a default judgment due to due process concerns.

<u>Application</u>

The Court finds that Hailos is more akin to a successor or mere continuation of ETMG based on multiple factors including: (1) same ownership by Sohl Holdings; (2) same individuals managing both ETMG and Hailos; (3) same business and products sold; (4) same principal mailing and general address; (5) Hailos was created within 60 days before the Default Judgment was entered in this matter, but after the Complaint had been filed; and (6) ETMG became inactive three weeks after the Default Judgment was entered. As such, the Court finds that the same individuals that controlled ETMG also control Hailos and had an opportunity to participate and be heard in this matter by filing a responsive pleading and engaging in the litigation, but chose not to do so. Thus, the Court finds that there is a unity of interest between ETMG and Hailos and that it would be inequitable to only consider the actions of ETMG alone without Hailos when Hailos is essentially a continuation of ETMG under a different name. The motion is therefore **GRANTED** as to Hailos.

However, the same type of unity of interest does not appear to exist with Axel, which company existed when Disbrow initially filed suit, but Disbrow failed to name Axel as a Defendant. For these reasons, the motion is **DENIED** as to Axel.

V. CONCLUSION

The motion to amend judgment is **GRANTED** as to Hailos, but **DENIED** as to Axel.

Disbrow shall submit a written order on both motions to the Court consistent with this tentative ruling and in compliance with California Rules of Court, Rules 3.1312(a) and (b).

2-3. 24CV04788, Otani v. Northfield

Defendants Christopher Walter ("Walter") and Scott Tweten ("Tweten")(together "Defendants") demur separately to Plaintiffs Shelly and Carole Otani's Second Amended Complaint ("SAC").

Both demurrers are **SUSTAINED without leave to amend**. Defendants shall submit written orders regarding their demurrers consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

I. PROCEDURAL HISTORY

Plaintiffs claim that all named Defendants, including demurring parties, failed to obtain their fully informed consents and that Plaintiff Shelley became severely overdosed on narcotics and opioids while her mother, Plaintiff Carole, was present to witness the harms. (SAC, p. 4, ¶ GN-1.)

Defendants demurred to the claims alleged against them in Plaintiffs' First Amended Complaint on the grounds that the claims did not state sufficient facts to constitute either cause of action under Code of Civil Procedure ("C.C.P.") sections 430.10(e)-(f) and 430.50. (Walter's Amended Notice of Demurrer to First Amended Complaint, 2:7-10; Tweten's Amended Notice of Demurrer to First Amended Complaint, 2:4-15.) The Court ultimately sustained the demurrers with leave to amend.

Plaintiffs' SAC contains only one additional paragraph stating that:

> "Defendants…were each also individually responsible for the overdose events on June 1, 2023, including both the narcotic overdoses and the Narcan overdoses. The hospital order sheet for the narcotics states in printed form not to administer the narcotics that were negligently given at the same time and to wait at least an hour. Instead, both narcotics were administered at the same time resulting in a nearly fatal overdose to Shelley Otani and severe NIED to Carole Otani…"

(SAC, Attachment 1.e., p.13.) Defendants now demur again to the SAC on the grounds that it continues to fail to state facts sufficient to constitute a claim against them. Plaintiffs oppose both demurrers, to which Defendants have submitted reply briefs.

II. ANALYSIS

Legal Standard

Demurrer

A demurrer can be used only to challenge defects that appear on the face of the pleading under attack or from matters outside the pleading that are judicially noticeable. (C.C.P. § 430.30(a).) At demurrer, all facts properly pleaded are treated as admitted, but contentions, deductions and conclusions of fact or law are disregarded. (*Serrano v. Priest* (1971) 5 Cal.3d 584, 591.) Similarly, opinions, speculation, or allegations contrary to law or judicially noticed facts are also disregarded. (*Coshow v. City of Escondido* (2005) 132 Cal.App.4th 687, 702.) Each evidentiary fact that might eventually form part of a party's proof does not need to be alleged. (*C.A. v. William S. Hart Union High School Dist.* (2012) 53 Cal. 4th 861, 872.) Conclusory pleadings are permissible and appropriate where supported by properly pleaded facts, but the distinction between conclusions of law and ultimate facts is not at all clear and involves at most a matter of degree. (*Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6.) Leave to amend should generally be granted liberally where there is some reasonable possibility that a party may cure the defect through amendment. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) The burden of proving that there is a reasonable possibility to cure the defect is squarely on the party that filed the pleading, but if that burden is met and leave to amend is not granted, then that constitutes an abuse of discretion by the trial court. (*Ibid*.)

Lack of Informed Consent for Medical Treatment

The right to consent to medical treatment is "basic and fundamental," "intensely individual," and "broadly based." (*Stewart v. Superior Court* (2017) 16 Cal.App.5th 87, 105.) Thus, there is a "necessity, and a resultant requirement, for divulgence by the physician to his patient of all information relevant to a meaningful decisional process. (*Cobbs v. Grant* (1972) 8 Cal.3d 229, 242.) A cause of action for lack of informed consent—which sounds in negligence—arises when the doctor performs a procedure without first adequately disclosing the risks and alternatives. (*Saxena v. Goffney* (2008) 159 Cal.App.4th 316, 324.)

A physician has a fiduciary duty to disclose all information material to the patient's decision when soliciting a patient's consent to a medical procedure, which creates a cause of action premised on a physician's breach of this fiduciary duty that may alternatively be referred to as a claim for lack of informed consent. (*Jameson v. Desta* (2013) 215 Cal.App.4th 1144, 1164.) "Material information" means that which the physician knows or should know would be regarded as significant by a reasonable person in the patient's position when deciding to accept or reject the recommended medical procedure and which fact is not commonly appreciated. (*Truman v. Thomas* (1980) 27 Cal.3d 285, 291.) Furthermore, if a physician knows or should know of a patient's unique concerns or lack of familiarity with medical procedures, the scope of disclosure required may be expanded. (*Ibid*.) Examples of required disclosures are "the potential of death, serious harm, and other complications associated with a proposed procedure" and "such additional information as a skilled practitioner of good standing would provide under similar circumstances." (*Cobbs v. Grant* (1972) 8 Cal.3d 229, 232.) A physician is also required to disclose personal interests unrelated to the patient's health, such as research or economic interests, that may affect the physician's professional judgment. (*Moore v. Regents of Univ. of Cal.* (1990) 51 Cal.3d 120, 129.) There is no general duty of disclosure with respect to nonrecommended procedures, but in an appropriate case they may be evidence supporting the conclusion that a doctor should have disclosed information concerning a nonrecommended procedure. (*Vandi v. Permanente Medical Group, Inc.* (1992) 7 Cal.App.4th 1064, 1071.)

Negligent Infliction of Emotional Distress (NIED)

A cause of action for negligent infliction of emotional distress, or NIED, is not an independent tort but the tort of negligence, for which reason the traditional elements of duty, breach, causation, and damages also apply to NIED. (*Marlene F. v. Affiliated Psychiatric Medical Clinic Inc.* (1989) 48 Cal.3d 583, 588.) A "direct victim" NIED case is one in which the plaintiff's claim is not based upon witnessing an injury to someone else, but rather is based upon the violation of a duty owed directly to the plaintiff. (*Ragland v. U.S. Bank National Assn.* (2012) 209 Cal.App.4th 182, 205.) Where a plaintiff has not suffered any physical injury or impact, damages for NIED as a bystander should be recoverable only if the plaintiff: " (1) is closely related to the injury victim, (2) is present at the scene of the injury-producing event at the time it occurs and is then aware that it is causing injury to the victim and, (3) as a result suffers emotional distress beyond that which would be anticipated in a disinterested witness." (*Thing v. La Chusa* (1989) 48 Cal.3d 644, 647.) Absent exceptional circumstances, bystander recovery should be limited to "relatives residing in the same household, or parents, siblings, children, and grandparents of the victim." (*Thing*, supra, 48 Cal.3d at p. 668, fn. 10.) An unmarried cohabitant may not recover damages for NIED. (*Elden v. Sheldon* (1988) 46 Cal.3d 267, 273.)

<u>Walter's Demurrer to SAC</u>

Walter argues that the entire complaint is uncertain and fails to comply with Code of Civil Procedure section 431.10(f) because causes of action are not separately stated and the factual basis for each cause is unclear. (Walter Demurrer, 4:20-22.) The claim for lack of informed consent was inadequately stated as a separate cause of action and does not allege facts establishing Dr. Walter had a duty to disclose risks at issue because the duty to obtain informed consent arose from the physician who recommended performing the procedure. (*Id*. at 4:25-28, 5:1-16.) While Plaintiff does assert a claim for bystander NIED, Walter argues that the SAC continues to fail because Carole Otani was not present at the time Dr. Walter assisted in the operating room nine days earlier on May 23, 2023, and cannot satisfy the contemporaneous awareness requirement. (*Id*. at 9:4-11.)

As to the lack of informed consent claim, Plaintiffs argue that there is no evidence yet that Dr. Walter did not play any role in obtaining Shelly Otani's informed consent for surgical and anesthesia procedures. (Opposition, 5:2-8.) As for NIED, Plaintiffs mainly rely on legal authority in which cases family members were present when their loved one was suffering due to a lack of timely response and urgency by the medical team at the hospital, which Plaintiff argues happened with her when the nurses were not immediately responding at the ER. (*Id*. at 5:10-27.)

In the Reply, Walter argues that Plaintiffs' opposition failed to state a claim as a matter of law regarding bystander NIED and the opposition also conceded the deficiencies in the lack of informed consent claim. (Reply, pp. 2-4.)

The Court finds that the SAC continues to fail to allege sufficient facts to support their claims in the Complaint against Walter. Plaintiffs could not cure this defect through amendment, so at this time the Court sustains Walter's demurrer without leave to amend.

Tweten's Demurrer

For similar reasons as described above for the Walter demurrer, Tweten argues that Plaintiffs' Complaint fails to allege facts sufficient to state a cause of action for lack of informed consent or for NIED. (Tweten Demurrer, pp. 4-10.) Defendant Tweten requests that the demurrer be sustained without leave to amend as to these causes.

Plaintiffs opposition makes the same arguments described above regarding the Walter Demurrer as to the bystander NIED claim. (Opposition, pp. 1-2.)

The Reply points out that the Opposition concedes Dr. Tweten was not present during the narcotic overdose of June 1, 2023, which was a basis for the NIED claim of Carole Otani being present and aware that Shelley Otani was unresponsive and dying in a hospital bed from that narcotic overdose. (Reply, pp. 2-3.)

As stated above, the Court finds that Plaintiffs' SAC continues to fail to allege sufficient facts to support their claims. Given they were not able to cure by amendment, the Court will sustain the demurrer as to Dr. Tweten without leave to amend.

III. CONCLUSION

As mentioned, both demurrers are **SUSTAINED without leave to amend**. Defendants shall submit written orders regarding their demurrers consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

4. 24CV06150, Citibank N.A. v. Ferreira

Plaintiff CitiBank, N.A.'s ("Plaintiff" or "CitiBank") unopposed motion to vacate the dismissal and entered judgment pursuant to Code of Civil Procedure ("C.C.P.") section 664.6 is **GRANTED**. Judgment shall be entered in the amount of **$2,297.61** against Defendant Candice Ferreira ("Defendant") for the outstanding debt plus costs. Per Evidence Code sections 452 and 453, CitiBank's request for judicial notice of the party's Stipulated Agreement is **GRANTED**.

I. PROCEDURAL HISTORY

CitiBank brought this action against Defendant to collect payment on credit card debt owed on the account number ending in 7455. (Request for Judicial Notice, Exhibit B, ¶ 2.) The parties entered into a Stipulation Agreement pursuant to C.C.P. § 664.6 (the "Stipulation"), according to which Defendant agreed to pay CitiBank to satisfy the debt owed for $3,903.07 plus any court costs required to enforce the Stipulation less credit for payments made in good funds before the time of any default. (*Id*. at Exhibit B, ¶ 1.) Before defaulting, Defendant paid $2,189.07 on the debt owed. (Suman Decl., ¶ 6.) CitiBank provided Defendant with a 10-day written notice of the failure to make payment and intention to request the Court to enter judgment under the terms of the Stipulation. (Suman Decl., ¶ 5.) Defendant has not cured the default, so CitiBank now moves for entry of judgment under the Stipulation. Despite proper and timely service of the moving papers and notice of hearing date, Defendant did not oppose the motion.

II. ANALYSIS

Legal Standard

If parties to a pending litigation agree to sign a written stipulation for settlement of the case, then the court may upon noticed motion enter judgment pursuant to the terms of the settlement. (C.C.P. § 664.6(a).) The court may retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement if the parties request it. (*Ibid*.) "Section 664.6 was enacted to provide a summary procedure for specifically enforcing a settlement contract without the need for a new lawsuit." (*Weddington Productions, Inc. v. Flick* (1998) 60 Cal.App.4th 793, 809, 71 Cal.Rptr.2d 265.)

CitiBank's Motion

CitiBank moves unopposed to vacate the dismissal and moves enter judgment per the Stipulation and section 664.6. (Motion, pp. 3-4.) CitiBank seeks the Court to enter judgment in the amount of $2,297.61, which includes the principal sum remaining on the debt in the amount of $1,714.00 plus court costs in the sum of $583.61. (Suman Decl., ¶ 7; Memorandum of Costs dated May 18, 2026.) As mentioned, the motion is unopposed.

Application

CitiBank sufficiently demonstrated that the parties entered into a valid written and signed stipulated agreement, under which Defendant continues to owe after defaulting on payment obligations. Per the motion, the parties' Stipulation, and C.C.P. section 664.6, the Court finds it reasonable to enter judgment in the amount requested against Defendant, for the remaining debt owed plus court costs in bringing this motion.

III. CONCLUSION

Accordingly, the motion is **GRANTED**. Judgment shall be entered in the amount of **$2,297.61** against Defendant for the outstanding debt plus costs. Unless the parties request and appear for oral argument, the Court will sign the proposed order and proposed judgment.

5. 25CV03897, De Dios Hernandez v. Spaletta Ranch Corporation

Defendant Spaletta Ranch ("Defendant") moves to strike all allegations and prayers for punitive and exemplary damages throughout Plaintiff Juan De Dios Hernandez's ("Plaintiff") Complaint. Defendant Clover-Stornetta Farms, LLC filed a joinder in support of the motion. The motion is **DENIED**.

I. PROCEDURAL HISTORY

Plaintiff's complaint alleges punitive and exemplary damages in relation to employment-related claims for discrimination, harassment, retaliation, failure to accommodate, failure to engage in the interactive process, wage and hour violations, retaliation for alleged reporting of unlawful conduct, and wrongful termination in violation of public policy. (Complaint, 2:6-14.) In Paragraphs 33, 34, 49, 50, 64, 65, 79, 80, 96, 111, 119, 126, 136, and Prayer for Relief Item 4, Plaintiff makes requests for punitive and exemplary damages claiming that Defendant acted with conscious disregard, willfully and knowingly, and the conduct was done with malice, fraud, oppression, and in reckless disregard of Plaintiff's rights. (Notice of Motion, pp. 2-4.)

Defendant argues that the Complaint fails to plead facts sufficient to support punitive damages under Civil Code section 3294 and has only stated boilerplate allegations. (Memorandum of Points and Authorities ["MPA"], 2:15-23.) Defendant moves to strike these portions of the Complaint on that basis, which Plaintiff opposes. Defendant submitted a Reply to the Opposition.

II. ANALYSIS

Legal Standard

Motion to Strike

The court may, "upon a motion made pursuant to Section 435, or at any time in its discretion, and upon terms it deems proper: (a) Strike out any irrelevant, false, or improper matter inserted in any pleading. (b) Strike out all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court." (C.C.P. §§ 435, 436.) Any party may serve and file a notice of motion to strike the whole or any part of a pleading within the time allowed to respond to the pleading, within the notice specifying the hearing date on a motion to strike the complaint. (*Id*. at § 435(a)-(b).) Where the defect subject to the motion to strike is capable of cure, the court should allow leave to amend. (*Vaccaro v. Kaiman* (1998) 63 Cal.App.4th 761.)

Punitive or Exemplary Damages

When a plaintiff claims a breach of an obligation against a defendant, not arising from any contract, punitive damages may be recovered in addition to actual damages when it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice against the plaintiff. (Cal. Civ. Code § 3294.) The code describes "malice" as conduct that the defendant intended to cause injury to the plaintiff, or "despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others." (*Id.* at § 3294(c)(1.)) "Oppression" is defined as "despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights." (*Id.* at § 3294(c)(2).) Finally, "fraud" is defined as the "intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant of thereby depriving a person of property or legal rights or otherwise causing injury." (*Id*. at § 3294(c)(3).)

<u>Defendant's Motion to Strike</u>

Defendant argues that there is no basis for punitive damages in the Complaint because the FAC fails to state in more detail what conduct, authorization, or ratification by a person whose role and authority are sufficient to impose punitive damages on Defendant, and how that conduct showed malice, oppression, or fraud. (MPA, 6:12-19.) Defendant concedes that the Complaint mentions John Spaletta but argues that it does not plead what his position in the partnership is, or if he was a partner with the authority or agent within the meaning of Civil Code section 3294. (MPA, 8:2-12.) Defendant also argues that punitive damages are unavailable for wage-and-hour claims. (*Id*. at 8:28, 9:1-25.)

<u>Plaintiff's Opposition</u>

Plaintiff emphasized that the Complaint alleges a known member of Defendants' management personally uttered racist remarks towards Plaintiff regarding national origin, that a named agent threatened to kill someone and Defendants failed to investigate the threat, that Defendants ordered Plaintiff to bury livestock in violation of environmental law, and that Plaintiff's report of these types of misconduct resulted in more intense mistreatment. (Opposition, 1:10-22.) Plaintiff argues that the Complaint alleges specific facts and names a member of management and an agent of Defendants to support the request for punitive damages in Paragraphs 12 through 15. (*Id*. at 6:19-26, 7:1-5.)

<u>Defendant's Reply</u>

Defendant reaffirms that the Complaint does not allege that any wrongdoer was a partner acting in the ordinary courts of the business or with authority and that the reporting allegations do not support a theory of ratification. (Reply, pp. 3-6.)

<u>Application</u>

The Court finds that the Complaint sufficiently alleges ultimate facts to allege the "despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others" element of malice to support a prayer for punitive damages at the pleadings stage.

III. <u>CONCLUSION</u>

The motion is **DENIED**. Plaintiff shall submit a written order on the motion consistent with this tentative ruling and in compliance with California Rules of Court, Rules 3.1312(a) and (b).

<u>6. MCV-256077, Looney v. Singh</u>

Self-represented Defendant Ajitpal "Ajit" Singh's ("Defendant") motion to vacate default judgment is **DENIED** under Code of Civil Procedure section 473.5.

I. PROCEDURAL HISTORY

Plaintiff's Complaint asserts money due, breach of written contract for services sold and provided, open account, account stated, quantum meruit, and unjust enrichment, for collection services based on a written contract entered with Young's Market Company for credit to provide wholesale wine and alcohol to Defendants. (Complaint, ¶ 6.)

On July 23, 2021, the Summons and Complaint were served by personal service on "AJIT SINGH, INDIVIDUALLY, DBA FW LIQUOR & GROCERY AND AS PERSONAL GUARANTOR OF THE FW LIQUOR & GROCERY." (Proof of Service of Summons, ¶¶ 3.a., 5.a.) The address where he was served was 3127 Williamburg Drive, San Jose, California 95117. (*Id*. at ¶ 4.) On October 14, 2021, after a lack of response to the Complaint, Plaintiff requested entry of default. (See Request for Entry of Default dated October 14, 2021.) On November 3, 2021, a default judgment was entered against Defendant in the amount of $7,322.27. (See Default Judgment dated November 2, 2021.)

However, Defendant claims he was never served claiming that the Proof of Service of Summons is facially defective and presumptively false because he did not reside at that address at the time, had no actual notice of the lawsuit, and in November of 2020 sold the business. (See Motion, pp. 1-2.) He moves to vacate the default judgment entered on November 3, 2021, and to be allowed leave to file an Answer and defend the action on the merits. Plaintiff opposes the motion.

II. ANALYSIS

Legal Standard

Per C.C.P. section 473.5(a), "when service of a summons has not resulted in actual notice to a party in time to defend the action and a default or default judgment has been entered against him or her in the action, he or she may serve and file a notice of motion to set aside the default or default judgment and for leave to defend the action." The deadline to file a motion under this section is the earlier of the following: (1) within two years after entry of a default judgment against him or her; or (2) within 180 days after service on him or her of a written notice that the default or default judgment has been entered. (C.C.P. § 473.5.)

Per Civil Code section 1788.61(a)(1), notwithstanding C.C.P. section 473.5, a judgment debtor may move to set aside a default or default judgment where service of a summons in the action brought by a debt buyer has not resulted in actual notice to the judgment debtor in time to defend an action and a default has been entered against the person in the action.

Defendant's Motion to Vacate

Defendant argues that the Court should vacate the default judgment entered and allow him to file an Answer for the following reasons:

1. He was never served properly.

2. He had no actual notice of the lawsuit until receiving the Abstract of Judgment on May of 2026.
3. He sold the subject business, FW Liquor & Grocery, located at the location that the Proof of Service of Summons states personal service was effectuated one year prior to the filing of the lawsuit.
4. California's ABC records confirm that his liquor license was transferred and cancelled on December 22, 2020.
5. He was residing at a different address at the time the lawsuit was filed.
6. The Proof of Service of Summons is facially defective and presumptively false because it purports to have completed service on Defendant at an address he no longer had any presence.
7. Plaintiff has no admissible evidence that the debt was legally assigned to Collectronics of California.
8. Plaintiff unreasonably stayed enforcement of the judgment for over four and a half years which has resulted in prejudice to Defendant.

(Motion, pp. 3-5.)

<u>Opposition</u>

Plaintiff argues that labelling the Proof of Service of Summons as "facially defective" does not identify a specific error with it that shows the Summons and Complaint were not served in a manner authorized by statute. (Opposition, 1:3-17.) Even if Defendant sold his business or lived in an unidentified address different to the one identified in the Proof of Service, Defendant did not adequately establish that the method of service reflected in the Proof of Service was faulty. (*Ibid*.)

<u>Application</u>

Plaintiff filed a Proof of Service of Summons of the Complaint and Summons which declared that the Summons and Complaint were personally served on Defendant. Defendant has failed to invalidate this apart from claiming that he sold his business or cancelled his liquor license prior and other things. Defendant also failed to bring this motion in a timely manner under C.C.P. section 473.5. For these reasons, the Court will not grant Defendant's motion.

III. <u>CONCLUSION</u>

Based on the foregoing, Defendant's motion to quash is **DENIED**. Plaintiff shall submit a written order to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).